

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

IN RE RESTASIS (CYCLOSPORINE
OPHTHALMIC EMULSION)
ANTITRUST LITIGATION

18-MD-2819 (NG) (LB)

THIS DOCUMENT APPLIES TO:

All Direct Purchaser Class Action:

FWK Holdings, LLC v. Allergan, Inc., 18-cv-00677 (E.D.N.Y.);

Rochester Drug Co-Operative, Inc. v. Allergan, Inc., 18-cv-00970 (E.D.N.Y.);

KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc. v. Allergan, Inc., No. 18-cv-00974 (E.D.N.Y.); and

Meijer, Inc. and Meijer Distribution, Inc. v. Allergan, Inc., 19-cv-02563 (E.D.N.Y).

**DIRECT PURCHASER CLASS PLAINTIFFS' UNOPPOSED MOTION FOR
CERTIFICATION OF SETTLEMENT CLASS, FINAL APPROVAL OF SETTLEMENT,
APPROVAL OF PLAN OF ALLOCATION, REIMBURSEMENT OF EXPENSES AND
AWARD OF ATTORNEYS' FEES AND SERVICE AWARDS, AND ORDER OF
DISMISSAL WITH PREJUDICE**

The direct purchaser class plaintiffs, FWK Holdings, LLC, Rochester Drug Co-Operative, Inc., KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc., Meijer, Inc., and Meijer Distribution, Inc., respectfully move this court for an Order:

1. Certifying the direct purchaser settlement class for the purposes of entering into the settlement with defendant Allergan pursuant to the settlement agreement between Allergan and the direct purchaser class plaintiffs, on behalf of themselves and a putative class of direct purchasers of Restasis ("Settlement Agreement") (ECF No. 490-1);
2. Appointing the direct purchaser class plaintiffs as the representatives of the settlement class;

3. Appointing Thomas M. Sobol and Kristen A. Johnson of Hagens Berman Sobol Shapiro LLP as Lead Counsel and appointing the members of the direct purchaser class plaintiffs' Executive Committee as Class Counsel pursuant to Rule 23(g);
4. Finding that the notice given to the direct purchaser settlement class satisfies due process, since class members were given due and adequate notice of the settlement, including their rights to opt out of the class or object to the settlement;
5. Finding that the settlement between the direct purchaser class plaintiffs and Allergan pursuant to the Settlement Agreement is in all respects fair, reasonable, and adequate to class members;
6. Entering final judgment and dismissing all of the direct purchaser class plaintiffs' claims against Allergan with prejudice, as described in the Settlement Agreement;
7. Approving the direct purchaser class plaintiffs' Plan of Allocation (ECF No. 490-7);
8. Approving Class Counsel's request for reimbursement of their reasonable litigation expenses, totaling \$1,948,635.05;
9. Awarding Class Counsel a fee award of one-third of the net settlement amount (one-third of \$51.25 million settlement minus the requested litigation expenses), totaling \$16,433,788.32, plus interest on that amount that may accrue prior to distribution; and
10. Approving service awards of \$150,000 to each of class plaintiffs and proposed representatives FWK Holdings, LLC, Rochester Drug Co-Operative, Inc., and KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc., and \$75,000 to class plaintiffs and proposed representatives Meijer, Inc. and Meijer Distribution, Inc. (for a total of \$525,000) in recognition of their participation in this case and the time and effort they expended on behalf of the proposed class.

In support of this Motion, the direct purchaser class plaintiffs rely upon the accompanying Memorandum of Law and the Declaration of Tina Chiango Regarding Notice to the Direct Purchaser Class. Class counsel also submit a proposed form of order with this Motion.

Dated: September 15, 2020

Respectfully submitted,

/s/ Thomas M. Sobol
Thomas M. Sobol
David S. Nalven
Kristen A. Johnson
Jessica MacAuley
Hannah W. Brennan
HAGENS BERMAN SOBOL SHAPIRO LLP
55 Cambridge Parkway, Suite 301
Cambridge, Massachusetts 02142
Tel: (617) 482-3700
Fax: (617) 482-3003
tom@hbsslaw.com
davidn@hbsslaw.com
kristenj@hbsslaw.com
jessicam@hbsslaw.com
hannahb@hbsslaw.com

*Interim Lead Counsel for the Proposed Direct
Purchaser Class*

Calvin Capshaw
Elizabeth DeRieux
CAPSHAW DERIEUX, LLP
114 E. Commerce Ave.
Gladewater, Texas 75647
Tel.: (903) 845-5770
ccapshaw@capshawlaw.com
ederieux@capshawlaw.com

Robert N. Kaplan
Gregory K. Arenson
Elana Katcher
KAPLAN FOX & KILSHEIMER LLP
850 Third Avenue, 14th Floor
New York, NY 10022
Tel.: (212) 687-1980
rkaplan@kaplanfox.com
garensen@kaplanfox.com
ekatcher@kaplanfox.com
wc
Linda P. Nussbaum
Bart Cohen
Peter Moran
NUSSBAUM LAW GROUP, P.C.

Paul E. Slater
Joseph M. Vanek
David P. Germaine
John P. Bjork
SPERLING & SLATER, P.C.
55 W. Monroe Street, Suite 3200
Chicago, Illinois 60603
Tel: (312) 641-3200
Fax: (312) 641-6492
pes@sperling-law.com
jvanek@sperling-law.com
dgermaine@sperling-law.com
jbjork@sperling-law.com

John D. Radice
A. Luke Smith
RADICE LAW FIRM, P.C.
475 Wall Street
Princeton, NJ 08540
Tel: (646) 245-8502
Fax: (609) 385-0745
jradice@radicelawfirm.com
lsmith@radicelawfirm.com

1211 Avenue of the Americas, 40th Floor
New York, NY 10036-8718
Tel.: (917) 438-9102
lnussbaum@nussbaumpc.com
bcohen@nussbaumpc.com
pmoran@nussbaumpc.com

*Counsel for FWK Holdings, LLC, Meijer, Inc., and Meijer Distribution, Inc.
and the Proposed Direct Purchaser Class*

Daniel J. Walker
BERGER MONTAGUE PC
2001 Pennsylvania Avenue, N.W., Suite 300
Washington, D.C. 20006
Tel: (202) 559-9745
Fax: (215) 875-4606
dwalker@bm.net

David F. Sorensen
Ellen Noteware
Zachary Caplan
Nicolas Urban
BERGER MONTAGUE PC
1818 Market St., Suite 3600
Philadelphia, PA 19103
Tel.: (215) 875-3000
Fax: (215) 875-4604
dsorensen@bm.net
enoteware@bm.net
zcaplan@bm.net
nurban@bm.net

Peter R. Kohn
FARUQI & FARUQI LLP
One Penn Center, Suite 1550
1617 JFK Boulevard
Philadelphia, PA 19103
Tel.: (215) 277-5770
Fax: (215) 277-5771
pkohn@faruqilaw.com

Bradley J. Demuth
Kristyn Fields
FARUQI & FARUQI LLP
685 Third Avenue, 26th Floor
New York, NY 10017
Tel.: (212) 983-9330
Fax: (212) 983-9331
bdemuth@faruqilaw.com
kfields@faruqilaw.com

Barry Taus
Miles Greaves
TAUS, CEBULASH & LANDAU, LLP
80 Maiden Lane, Suite 1204
New York, NY 10038
Tel: (212) 931-0704
Fax: (212) 931-0703
btaus@tcllaw.com
mgreaves@tcllaw.com

Counsel for Rochester Drug Co-Operative, Inc. and the Proposed Direct Purchaser Class

Michael L. Roberts
Debra G. Josephson
Karen S. Halbert
Stephanie E. Smith
ROBERTS LAW FIRM, P.A.

Dianne M. Nast
NASTLAW LLC
1101 Market Street, Suite 2801
Philadelphia, PA 19107
Tel: (215) 923-9300

20 Rahling Circle
Little Rock, AR 72223
Tel.: (501) 821-5575
Fax: (501) 821-4474
mikeroberts@robertslawfirm.us
debrajosephson@robertslawfirm.us
karenhalbert@robertslawfirm.us
stephaniesmith@robertslawfirm.us

Fax: (215) 923-9302
dnast@nastlaw.com

Counsel for KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc. and the Proposed Direct Purchaser Class

CERTIFICATE OF SERVICE

I, Thomas M. Sobol, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's CM/ECF system. Those attorneys who are registered CM/ECF users may access these filings, and notice of these filings will be sent to those parties by operation of the CM/ECF system.

Dated: September 15, 2020

/s/ Thomas M. Sobol
Thomas M. Sobol